IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/06/2003

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.716 OF 2001

K. Jagatheeswaran .. Appellant

-Vs-

State
rep. by Inspector of Police
NIB-CID
Chennai
Cr.No.21/95 .. Respondent

This criminal appeal is preferred under Section 374(2) Cr.P.C.
against the judgment of conviction ad sentence made in C.C.No.576/95 by the Special Court for NDPS Act, Chennai dated 12.8.1997.

!For Appellant : Mr.P.Venkatasubramaniam

^For Respondent : Mr.O.Srinath,
Govt. Advocate(Crl. side)

:JUDGMENT

The sole accused, who stood charged, tried, found guilty under Section 8(c) r/w 21 of N.D.P.S. Act and sentenced to undergo R.I. for 10 years with a fine of Rs.1 lakh, in default, to undergo R.I. for one year, has brought forth this appeal.
2. The short facts necessary for the disposal of the appeal can be stated as follows:
On 20.8.1995 at about 6.00 am, the Sub Inspector, Thomas Prabhakar reduced in writing an intimation received by him, informed the same to the Inspector, proceeded to the sport and on being identified, he intercepted the accused at Beracks road, near Dan Bosco School compound. After introducing himself as official of the Department and informed the right of the accused/appellant to be searched in the presence of the Magistrate or the Gazetted Officer, made search on the appellant in the presence of the witnesses, Babu and Rajendran. The accused was found to be in possession of 5 grams of Heroin, a narcotic drug substance in the right pocket of his pant. The same was seized in the presence of the witnesses. After following procedural formalities, the accused was arrested and was taken to station along with narcotic substance at 8.00 a.m. A case in Crime No.21/95 under

Sections 8(c) r/ w 21 of the N.D.P.S. Act was registered. The Sub Inspector has recorded the statements of the witnesses and produced the accused/appellant along with the contraband seized. On requisition, the contraband seized was sent for chemical analysis, which was accordingly done and found to be Heroin, a narcotic substance. Hence, a charge sheet was filed by the Inspector concerned.

3. In order to prove the charges against the appellant, the prosecution examined 5 witnesses and marked 7 exhibits and one M.O. After the evidence of prosecution was over, the accused/appellant was questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. He denied the same as false and no defence witness was examined.

4. After consideration of the rival submissions and scrutiny of the materials available, the trial Court found the accused guilty under Section 8(c) r/w 21 of N.D.P.S. Act and sentenced him to imprisonment as referred to above. Aggrieved, the appellant has brought forth this appeal.

5. Advancing argument for the appellant, the learned counsel with vigour and vehemence would submit inter-alia that the lower court, when there was no evidence available to connect the accused with the crime, has found him guilty; that the mandatory provisions of Section 50 of the N.D.P.S. Act was not strictly followed in this case; that on that ground, the lower court should have rejected the case of the prosecution; that the evidence of the independent witnesses should have been rejected in view of the inconsistency found therein; that apart from that the officials have not followed the provisions under Section 57 of the Act by not sending the report to the superior officers as contemplated under the said provisions of the Act and that for the reasons stated above, the lower court should have rejected the prosecution's case.

6. In answering the above contentions, the learned Government Advocate would submit that there is no merit in this appeal; that the prosecution by overwhelming evidence has clearly proved that the accused/ appellant was in illegal possession of a narcotic substance; that the same has been seized in a public place following all the procedural formalities, tested and found to be a narcotic substance; that under such circumstances, a presumption has got to be drawn against the appellant/accused unless or until he rebutted the same by making a plea that he had no knowledge about the same. But, in the instant case, he has not only failed to do so, but also the contraband has been directly seized from him; that he cannot plead that he had no knowledge about the same; that insofar as the present facts and circumstances of the case is concerned, Section 50 of the Act has been strictly complied with; that a perusal of Ex.P.5 would clearly indicate that the appellant was informed of his right to be searched in the presence of the Magistrate or the Gazetted Officer; that in the said Mahazar, the appellant has also signed, which fact was not disputed at the time of trial, and hence, it would be futile to submit that Section 50 of the Act has not been complied with and minor inconsistencies in the evidence of the independent witness, namely, P.W.2 with the other witnesses cannot be given much weight. Hence, the judgment of the lower court has got to be sustained.

7. This Court has given sincere consideration on the rival submissions and has given careful scrutiny of all the materials available. The gist of the prosecution case is that on 20.8.1995 at about 6.00 a. m.

P.W.4, the Sub Inspector of Police in the presence of the witnesses intercepted the appellant and made search after informing the appellant of his right to be searched in the presence of a Magistrate or a Gazetted Officer and the same has been well spoken to by the witnesses examined by the prosecution. The contention of the appellant's side that the mandate under Section 50 of the N.D.P.S. Act has not been complied with cannot be countenanced for the simple reason that not only the witnesses have spoken to the fact that the accused/ appellant was informed of his right to be searched in the presence of the Magistrate or the Gazetted Officer, but also Ex.P.3 Mahazar, wherein the independent witnesses have signed and Ex.P.5 intimation, wherein the appellant has also signed, would clearly speak about the fact the the right of the accused was clearly informed to him as contemplated under Section 50 of the Act.

8. As rightly pointed out by the learned Government Advocate, the minor inconsistencies cannot be given much weight to reject the prosecution case in the face of the evidence as to the illegal possession of narcotic substance by the accused. At the time of seizure, all the procedural formalities have been clearly followed and the same was tested and found to be a narcotic substance. Once the unlawful possession of the narcotic substance by the accused is proved, a presumption has got to be drawn against the accused, if he is unable to show otherwise, namely, he had no knowledge or required mental state as expected in law. Hence, presumption under Section 35 of the Act is well available to the prosecution in this case. The contention that Section 57 of the Act has not been followed cannot be countenanced for the simple reason that Ex.P.7 a detailed report was sent to the superiors. Apart from that it remains to be stated that what is required under Section 57 of the Act is not mandatory, but only a directory. Under the stated circumstances, the lower court was perfectly correct in finding the accused guilty under Section 8(c) r/w 21 of N.D.P.S. Act. The Court is unable to see anything to interfere in the conviction imposed on the appellant by the court below.

9. Coming to the question of sentence, the lower court has awarded minimum sentence of 10 years R.I. and a fine of Rs.1 lakh, and in default, to undergo R.I. for one year. Considering the facts and circumstances of the case, the minimum sentence of 10 years R.I. imposed on the appellant is affirmed. While confirming the fine amount of Rs.1 lakh, the default sentence imposed on the appellant for a period of one year is reduced to one month R.I. With the above modification, this criminal appeal is dismissed.

Index : Yes
Internet : Yes
vvk
To
1. The Special Judge, N.D.P.S. Act, Chennai
2. The Superintendent, Central Prison, Vellore
3. The Public Prosecutor, High Court, Madras
4. Mr.O.Srinath, Govt.Advocate (Crl.side),High Court,Madras
5. The Dy. Inspector General of Police, Chennai-4
6. The Inspector of Police, NIB-CID, Chennai